(1903) 188 U. S. 730, 47 L. Ed. 669, 23 Sup. Ct. Rep. 401; Fidelity Trust Co. v. Louisville, supra. The principal case is thus amply sustained by judicial authority.

CONTRACTS: REMEDY PROVIDED FOR IN COMPROMISE AGREEMENT: REMEDY FOR FRAUD INDUCING COMPROMISE—Pursuant to a compromise agreement the plaintiff dropped from the calendar suits then pending against the defendants, who, in consideration therefor, transferred to the plaintiff their interest in certain lands, and agreed to procure the documents necessary to effect the transfer. The agreement further provided that the plaintiff, upon the defendants' default in performing the same, might restore the prior suits to the calendar. The defendants failed to keep their agreement. The plaintiff sues, not for breach of the compromise agreement, but for the alleged deceit of the defendants which had induced him to enter into the same and for breach of a collateral warranty as to the extent of the defendants' interests in the lands. *Held:* that the action would lie and that the plaintiff's remedy was not restricted to a restoration of the prior suits. *Howland v. The Meximerican Company* (1921) 36 Cal. App. Dec. 948. Hearing in Supreme Court denied Feb. 6, 1922.

It is well settled that one party to a compromise, after the other's default, may waive his original cause of action and sue for breach of the compromise. 12 C. J. 360. Similarly, as the principal case holds, he may sue for the deceit which induced the compromise (Grabenheimer v. Blum (1885) 63 Tex. 369) and this rule is not affected by a recital therein that the original cause of action may be revived upon the other party's default. Logically, as the English cases hold, the damages in deceit should be not the value of the thing promised, in this case the land, but of the thing given up, in this case the cause of action. In California and some other jurisdictions, however, the rule is otherwise. Hines v. Brode (1914) 168 Cal. 507, 143 Pac. 729. In the case of a contract to convey land, where the title proves defective and there are no warranties, there is ordinarily no cause of action. If, however, there have been fraudulent representations an action for deceit will give damages based on the value of the land under the California rule.

PLEADING: CONTINUANCE DURING PENDENCY OF ANOTHER ACTION—A procured a judgment against B and B appealed. Pending the appeal, B sued A, who, by way of set-off, pleaded the judgment and moved for a continuance until the determination of the appeal. The motion was granted. *Held:* that the court had acted properly in that a judgment that would be *res judicata* concerning matters in a second action may be availed of by a continuance of that second action until the adjudication of the first hearing became final. *Houghton v. Superior Court* (1922) 63 Cal. Dec. 33.

It was early decided in California that, until judgment had been finally determined on appeal (Harris v. Barnhart (1893) 97 Cal. 546, 32 Pac. 589), or until the time for appeal has passed (Naftzager v. Gregg (1893) 99 Cal. 83, 33 Pac. 757), it was not *res judicata* of the issues involved in a second action. Clearly, a party to that second action might avail himself of it by a plea in abatement (Brown v. Campbell (1895) 110 Cal. 644, 43 Pac. 12; Connor v. Bank of Bakersfield (1917) 174 Cal. 400, 163 Pac. 353), and prob-

ably that would be the better practice. There seems, however, to have been some confusion as to whether or not the trial court had sufficient discretionary power to grant a continuance under such circumstances. This doubt was due in a great measure to the case of Dunphy v. Belden (1881) 57 Cal. 427, holding that the mere fact that an appeal was pending in another cause was not sufficient ground for the granting of a continuance. That case was impliedly overruled in two subsequent cases (Brown v. Campbell, supra, and Jones v. Smith (1900) 128 Cal. 14, 60 Pac. 466); but, because never expressly overruled, it has often been quoted as representing the California view. (See 13 C. J. 136, n. 86.) The principal case expressly overrules it. The result is that the question of whether a continuance should or should not be granted under such circumstances is left to the court's discretion and, being a matter of discretion, the court will look to see whether or not the moving party has acted in good faith. In the future, then, the pleader who, in good faith, wishes to avail himself of a judgment which would be *res judicata* of some or all of the issues involved in the present cause may, until the final adjudication of the other action, do so by simply moving the court for a continuance.

POLICE: RIGHT TO TAKE PHOTOGRAPHS—The right of an officer to take the photograph of a person arrested for felony is in great confusion (8 California Law Review, 25). In California there is a law (Cal. Stats. 1917, p. 1391) which provides in section five that it shall be the duty of the board of managers of the State Bureau of Criminal Identification and Investigation to file "all plates, photographs, outline pictures, measurements, information and descriptions" received by virtue of its office. Section eight makes it the duty of the sheriffs, etc., to furnish to the bureau daily copies of finger-prints and descriptions of all persons arrested who in the best judgment of such sheriffs are wanted for serious crimes, etc. The omission in section eight of certain words, including the word "photograph" contained in section five, has raised a doubt as to the right of sheriffs to take photographs; or, in other words, are photographs included under the word "description" in section eight? This doubt would seem to be resolved in favor of the right in the case of *Burke v. Watts* (1922) 63 Cal. Dec. 182. Plaintiff sued the defendant for malicious prosecution in procuring his arrest. The sheriff had taken the plaintiff's photograph. The photograph was offered in evidence to enhance the damages. The defendant contended that he was not responsible for the act of the sheriff. The court concedes this would be true unless there is some law authorizing photographs to be taken. This authority the court finds in section eight of the Criminal Identification Act, saying "Clearly the photographs in question were taken as a part of respondent's description." This would seem to be the proper construction. The Bertillon identification system mentioned in the statute would be practically useless without a photograph. The evident purpose was to confer a general power to take photographs, but to leave its exercise to the discretion of the sheriff. It would obviously be foolish to require the sheriff to take a photograph and include it with every description. Many times the finger-prints are sufficient, as in the case of habitual criminals whose photographs are already in every criminal library.